

Department of Energy

§ 1045.9

NRC or by its licensed or regulated facilities and activities.

(e) Heads of Agencies with access to RD and FRD shall:

(1) Ensure that RD and FRD are classified in such a manner as to assure the common defense and security in accordance with the policies established in this part;

(2) Designate an RD management official to direct and administer the RD classification program within the agency; and

(3) Promulgate implementing directives.

(f) Agency RD management officials shall:

(1) Jointly with the DOE, develop classification guides for programs over which both agencies have cognizance;

(2) Ensure that agency and contractor personnel who generate RD and FRD documents have access to any classification guides needed;

(3) Ensure that persons with access to RD and FRD are trained on the authorities required to classify and declassify RD and FRD information and documents and on handling procedures and that RD classifiers are trained on the procedures for classifying, declassifying, marking and handling RD and FRD information and documents; and

(4) Cooperate and provide information as necessary to the Director of Classification to fulfill responsibilities under this part.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68736, Nov. 28, 2006]

§ 1045.5 Sanctions.

(a) Knowing, willful, or negligent action contrary to the requirements of this part which results in the misclassification of information may result in appropriate sanctions. Such sanctions may range from administrative sanctions to civil or criminal penalties, depending on the nature and severity of the action as determined by appropriate authority, in accordance with applicable laws.

(b) Other violations of the policies and procedures contained in this part may be grounds for administrative sanctions as determined by appropriate authority.

§ 1045.6 Openness Advisory Panel.

The DOE shall maintain an Openness Advisory Panel, in accordance with the Federal Advisory Committee Act, to provide the Secretary with independent advice and recommendations on Departmental openness initiatives, including classification and declassification issues that affect the public.

§ 1045.7 Suggestions or complaints.

(a) Any person who has suggestions or complaints regarding the Department's classification and declassification policies and procedures may direct them in writing to the Director, Office of Classification, HS-90/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-1290.

(b) Such letters should include a description of the issue or problem, the suggestion or complaint, all applicable background information, and an address for the response.

(c) DOE will make every effort to respond within 60 days.

(d) Under no circumstances shall persons be subject to retribution for making a suggestion or complaint regarding the Department's classification and declassification policies or programs.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68736, Nov. 28, 2006]

§ 1045.8 Procedural exemptions.

(a) Exemptions to the procedural provisions of this part may be granted by the Director of Classification.

(b) A request for an exemption shall be made in writing to the Director of Classification and shall provide all relevant facts, justification, and a proposed alternate procedure.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.9 RD classification performance evaluation.

(a) Heads of agencies shall ensure that RD management officials and those RD classifiers whose duties involve the classification or declassification of significant numbers of RD or FRD documents shall have their personnel performance evaluated with respect to classification activities.

§ 1045.10

(b) Procedures for the evaluation under paragraph (a) of this section may be the same as those in place for NSI related classification activities as required by Executive Order 12958.

Subpart B—Identification of Restricted Data and Formerly Restricted Data Information

§ 1045.10 Purpose and scope.

(a) This subpart implements sections 141 and 142 (42 U.S.C. 2161 and 2162) of the Atomic Energy Act, which provide for Government-wide policies and procedures concerning the classification and declassification of RD and FRD information.

(b) This subpart establishes procedures for classification prohibitions for RD and FRD, describes authorities and procedures for identifying RD and FRD information, and specifies the policies and criteria DOE shall use in determining if nuclear-related information is RD or FRD.

§ 1045.11 Applicability.

This subpart applies to—

- (a) Any person with authorized access to RD or FRD;
- (b) Any agency with access to RD or FRD; and
- (c) Any person who might generate information determined to be RD or FRD.

§ 1045.12 Authorities.

(a) The Director of Classification may determine whether nuclear-related information is RD.

(b) Except as provided in paragraph

(c) of this section, the Chief Health, Safety and Security Officer may declassify RD information.

(c) The Chief Health, Safety and Security Officer, jointly with the DoD, may determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category.

(d) The Chief Health, Safety and Security Officer jointly with the DoD may declassify FRD information.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

10 CFR Ch. X (1–1–13 Edition)

§ 1045.13 Classification prohibitions.

In no case shall information be classified RD or FRD in order to:

- (a) Conceal violations of law, inefficiency, or administrative error;
- (b) Prevent embarrassment to a person, organization, or Agency;
- (c) Restrain competition;
- (d) Prevent or delay the release of information that does not require protection for national security or non-proliferation reasons;
- (e) Unduly restrict dissemination by assigning an improper classification level; or
- (f) Prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety.

§ 1045.14 Process for classification and declassification of restricted data and formerly restricted data information.

(a) *Classification of Restricted Data—*
(1) *Submission of Potential RD for Evaluation.* Any authorized holder who believes he or she has information which may be RD shall submit it to an RD classifier for evaluation. The RD classifier shall follow the process described in this paragraph whenever he or she is unable to locate guidance in a classification guide that can be applied to the information. The RD classifier shall forward the information to the Director of Classification via their local classification or security office. The Director of Classification shall determine whether the information is RD within 90 days of receipt by doing the following:

- (i) Determine whether the information is already classified RD under current classification guidance; or
- (ii) If it is not already classified, determine if the information concerns the design, manufacture, or utilization of nuclear weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; and

(A) Apply the criteria in §1045.16 and §1045.17 as the basis for determining the appropriate classification; and

(B) Provide notification of the decision by revising applicable classification guides, if appropriate.